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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 23rd August 2007

No.9887-1i/1(B)-118/2003/LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 28th June 2007 in I.D. Case No. 13/2004 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. Shree Mahavir Corporation, Pahala and its workman Shri Akshaya Kumar Das was referred for adjudication is hereby published as in the schedule below:—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 13 OF 2004

The 28th June 2007

Present :

Shri S.K.Mohapatra, O.S.J.S. (Jr. Br.)
Presiding Officer,
Labour Court,
Bhubaneswar.

Between :

The Management of
M/s.Shree Mahavir Corporation, Pahala .. First-party—Management

And

Its workman
Shri Akshaya Kumar Das, .. Second-party—Workman

Appearances :

Shri P.K. Nayak

.. For First Party —Management

Shri A.K. Das

..Second Party—Workman himself

AWARD

The Government of Orissa, Labour & Employment Department referred the present dispute between the Management of M/s. Shree Mahavir Corporation, pahala and its workman Shri Akshaya Kumar Das under Notification No. 1057/LE., dated the 31st January 2003 vide Memo No. 885(5)/LE., dated the 24th January 2004 for adjudication by this Court.

2. The terms of reference by the State Government is as follows:—

“Whether the action of the Management of M/s. Shree Mahavir Corporation Depot at Mancheswar Industrial Estate, Bhubaneswar in terminating the employment of Shri Akshaya Kumar Das with effect from 2nd May 2003 by way of refusal is legal/or justified ? If not to what relief the workman is entitled to ?”

3. Shorn of all unnecessary details, the brief facts which led to the present reference are as follows:—

The workman namely Shri Akshaya Kumar Das joined as Godown Assistant under M/s. Shree Mahavir Corporation (hereinafter referred to as the Management) at their depot at Pahala on 29th July 1999 on a monthly salary of Rs.2,406/-. The Management organization is the carrying and forwarding Agent of M/s. BPL Limited, Bhubaneswar and deal with BPL products like colour Television, Refrigerators, Washing Machines, Medical Equipments, Audios etc. The workman continued in the post of Godown Assistant up to February, 2002 when he was promoted to the post of Godown in charge with a salary of Rs. 4,600/- per month with effect from April, 2002. When the Godown of the Management was shifted from Pahala to Macheswar, the workman was also posted in the new Godown at Mancheswar. On 2nd May 2003 the proprietor of the Management concerned refused employment to the workman without any valid reason. Before terminating the employment of the workman by way of refusal of employment no notice had been served on the workman and no retrenchment compensation in accordance with the provisions under Section

25-F of the Industrial Dispute Act, 1947 (hereinafter referred to as the I.D Act) was given to the workman. After his retrenchment from service the workman lodged a complaint before the District Labour Officer, Khurda who started a conciliation proceeding which did not yield any result because of non-attendance of the Management before the District Labour Officer, Khurda during the conciliation proceeding and therefore, the Conciliation Officer-*cum*- District Labour Officer, Khurda submitted his report to the Government of Orissa who referred the present dispute to this Court for adjudication.

4. The Management on their part have taken a stand that the Management concern is not an industry and the second party is not a workman and therefore the present reference is not maintainable. Further stand of the Management is that when the work load at Pahala Godown was reduced due to fall in volume of business the depot was shifted to Mancheswar and the workman was directed to join his duty at Horlicks Depot of the Management at Manguli with effect from 2nd May 2003. The workman instead of joining his new assignment at Manguli, remained absent from duty as he had got better employment elsewhere (nature and place of alleged employment has not noted in the written statement). The workman in order to have illegal gain filed on industrial dispute on false ground of refusal of employment. According to the Management, during the conciliation stage the workman had been asked to join his duty at Manguli Depot vide letters dated the 7th July 2003 and 13th August 2003 but inspite of such directions the workman did not join his new assignment. Since the workman abandoned his service by not joining at his new assignment at Manguli Depot of the Management, the question of termination of the service of the workman by the Management does not arise. On the other hand, as because the workman has voluntarily abandoned his service, the question of compliance of provisions of Section 25-F of the I.D. Act does not arise at all. On these averments the Management has contended that the workman is not entitled to any benefit under any provisions of the I.D. Act.

5. On the aforesaid pleadings of the parties, the following issues have been framed for determination.

ISSUES

- (i) Whether the action of the Management of M/s. Shree Mahavir Corporation at Mancheswar Industrial Estate, Bhubaneswar in terminating the employment

of Shri Akshaya Kumar Das with effect from 2nd May 2003 by way of refusal is legal and/or justified ?

(ii) If not to what relief the workman is entitled to ?

6. Before answering the issue No. (i), it is of paramount important to answer if the Management concern is an industry within the meaning of Section 2(j) of the I.D. Act and as to whether the second party namely Shri Akshaya Kumar Das is a workman within the meaning of Section 2(s) of the I.D. Act.

On the first question, the very pleadings of the parties is that the Management concern is a Clearing and Forwarding Agent of M/s. BPL Limited for sales and services of various consumer electronic durables like Colour Television, Refrigerators, Washing Machines, Medical Equipments, Audios etc. This pleading of the workman has not been denied by the Management in its written statement. The evidence of the workman that he joined at Pahala Depot of the Management as a Depot Assistant in the year 1999 is also admitted by the Management. Therefore, it is very clear from the admitted pleadings and from the evidence on record that the Management is engaged in systematic activity of business in consumer electronic goods of BPL Company with the co-operation of the workmen which essentially involve distribution of goods obviously with a view to satisfy the human wants and therefore, the Management is an industry within the meaning of Section 2(j) of the I.D. Act.

On the next question as to whether the second party is a workman or not it is an admitted fact in the instand case that the second party joined the Management concerned in the year 1999 as a Depot Assistant on a monthly salary basis. Facts admitted need not be proved. As already held in the preceding paragraph, the Management concern is an industry within the meaning of Section 2(j) of the I.D. Act. Therefore, it goes without saying that the second party had been employed in the industry of the Management concern to do clerical work of Depot Assistant on being hired for the purpose on a monthly salary basis. Therefore, the second party is definitely a workman within the meaning of Section 2(s) of the I.D. Act.

Since the Management concern is an industry and the second party is a workman and there is existence of an industrial dispute between the workman and the Management, the reference made by the Government of Orissa to this Court for adjudication of the dispute is definitely maintainable and consequently the stand of the Management that the present case is not maintainable can not be sustained.

7. Now coming to the main question as to whether the Management concern had terminated the employment of the workman by way of refusal of employment as alleged or as to whether the workman had abandoned his service, the evidence of the workman W.W.1 is that all of a sudden on 2nd May 2003 after-noon the Management verbally refused further employment to him and therefore his service was terminated with effect from 3rd May 2003 by way of refusal of employment. Save and except this no documentary evidence has been proved by the workman to show that his service had been really terminated by the Management. On the other hand, one Accountant of the Management has been examined as M.W. 1. In his evidence M.W.1 has stated that the workman was asked to join his duty at Manguli with effect from 2nd May 2003 but instead of reporting his duty at Manguli Depot, the workman absconded as he had got better job elsewhere. Ext.B has been proved by M.W.1 is the Xerox copy of the order of transfer. In his cross-examination the workman W.W.1 has admitted that during conciliation proceeding he had been given one letter by the Management on 13th August 2003 directing him to join as Depot Assistant at Manguli Depot. Thus it is very clear that at least on 13th August 2003 it had been known to the workman that he had been transferred to Manguli Depot by the Management. Ext.E is the Xerox copy of the letter 13th August 2003 under which the workman had been informed to join at Manguli Depot of the Management immediately on receipt of the letter Ext.E. In Ext.E it has been clearly mentioned that if the workman failed to report within seven days from the date of receipt of this letter Ext.E it would be presumed that he was no more interested in his service under the Management. The workman himself has admitted about the receipt of the letter dated the 13th August 2003. Thus it is seen that vide Ext.B the Management transferred the workman to Manguli Depot and thereafter also the Management offered the workman to join at Manguli Depot vide Ext.E within seven days of the receipt of the letter. Therefore in the facts and circumstances of the case it can never be said that the Management had terminated the service of the workman with effect from 2nd May 2003 by way of refusal of employment. There is no cogent evidence on record to sustain the claim of the workman that his services had been terminated with effect from 2nd May 2003 by way of refusal of employment. On the other hand, there is evidence on record that the workman did not join his new posting at Manguli Depot inspite of notices and therefore, it is a clear case of abandonment of service by the workman and not a case of retrenchment of service by the Management and therefore the issue No. (i) is answered accordingly.

8. On the question of issue No.(ii), no relief can be granted to the workman under any provisions of the I.D. Act because of my finding on issue No. (i) to the effect that there was no retrenchment of the workman from his service but on the other hand, in the facts and circumstances of the case it can safely be concluded that the workman himself had abandoned his service. Therefore, the issue No.(ii) is answered that the workman is not entitled to any relief.

9. In the light of the discussion made above, the reference is answered as follows:—

- (i) The Management had never terminated the employment of the workman Shri Akshaya Kumar Das with effect from 2nd May 2003 by way of refusal of employment but on the other hand, the workman himself had abandoned his service.
- (ii) The workman is not entitled to any relief.

Dictated and corrected by me

S.K. Mohapatra
Dt. 28-06-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

S.K. Mohapatra
Dt. 28-06-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

By order of the Governor
N.C.RAY
Under-Secretary to Government